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7 ELIAZAR OLEA,
8 Plaintiff,
9 v.
10 TEICHERT PIPELINES, INC.,
11 Defendant.

Case No. 21-cv-03016-JST

**ORDER REMANDING TO STATE
COURT; DENYING MOTIONS FOR
SUMMARY JUDGMENT AND
PARTIAL SUMMARY JUDGMENT**

Re: ECF Nos. 46, 47, 48, 56

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13 On May 31, 2023, the Court issued an order to show cause why this case should not be
14 remanded to state court for lack of Article III standing. ECF No. 55. On June 30, Teichert filed a
15 response to the order to show cause. ECF No. 56. The Court will remand the case to state court.

16 **I. BACKGROUND**

17 Teichert provides construction and repairs for natural gas pipelines throughout California.
18 ECF No. 48-4 ¶ 3. On March 29, 2018, Teichert interviewed Olea for a position as a laborer and
19 offered him the job. ECF No. 48-3 at 31-32, 34; ECF No. 50-1 at 10. The following day, Olea
20 returned to Teichert's office to review and complete employment forms, including a Consumer
21 Disclosure and Authorization Form. *Id.* at 11-12, 34, 58, 60. The disclosure form included
22 multiple disclosures mandated by federal and state law. *Id.* at 60. Olea reviewed the disclosure
23 form, signed the accompanying release consenting to preparation of background reports, and
24 checked a box indicating he wanted a copy of any consumer report ordered on him. *Id.* at 40, 43.
25 On April 2, Olea began work with Teichert. *Id.* at 39.

26 On February 23, 2021, Olea filed a complaint in state court, individually and on behalf of a
27 putative class, alleging that Teichert's disclosure forms are inadequate under the federal Fair
28 Credit Reporting Act ("FCRA"), California's Investigative Consumer Reporting Agency Act

1 (“ICRAA”), California’s Consumer Reporting and Agencies Act (“CCRAA”), and California’s
2 Unfair Competition Law (“UCL”). ECF No. 1-2. Teichert removed the action to federal court.
3 ECF No. 1.

4 In December 2022, each party moved for summary judgment. ECF Nos. 46, 47, 48. In
5 May 2023, the Court ordered Teichert, the removing party, to show cause why this case should not
6 remanded. ECF No. 55. On June 30, Teichert filed a response to the order to show cause. ECF
7 No. 56.

8 **II. DISCUSSION**

9 **A. Standing**

10 Olea lacks standing to maintain his FCRA claim. “Plaintiffs must maintain their personal
11 interest in the dispute at all stages of litigation . . . ‘with the manner and degree of evidence
12 required at the successive stages of the litigation.’” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190,
13 2208 (2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). At summary
14 judgment, “the plaintiff can no longer rest on [] ‘mere allegations,’ but must ‘set forth’ by affidavit
15 or other evidence ‘specific facts’” to support standing. *Lujan*, 504 U.S. at 561.

16 “Only those plaintiffs who have been concretely harmed by a defendant’s statutory
17 violation may sue that private defendant over that violation in federal court.” *TransUnion*, 141 S.
18 Ct. at 2203. To determine whether a harm is concrete, “[c]ourts should assess whether the alleged
19 injury to the plaintiff has a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a
20 basis for a lawsuit in American courts. *Id.* at 2204.

21 “A plaintiff who alleges a ‘bare procedural violation’ of the FCRA, ‘divorced from any
22 concrete harm,’ fails to satisfy Article III’s injury-in-fact requirement.” *Syed v. M-I, LLC*, 853
23 F.3d 492, 499 (9th Cir. 2017) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). Olea
24 alleges that Teichert violated 15 U.S.C. § 1681b(b)(2)(A), an FCRA provision that requires
25 employers to provide a standalone disclosure form and receive written authorization before
26 procuring a consumer report on a prospective employee. In *Syed*, the Ninth Circuit explained that
27 Section 1681b(b)(2)(A) “creates a right to information by requiring prospective employers to
28 inform job applicants that they intend to procure their consumer reports as part of the employment

1 application process,” “creates a right to privacy by enabling applicants to withhold permission to
2 obtain the report from the prospective employer, and [creates] a concrete injury when applicants
3 are deprived of their ability to meaningfully authorize the credit check.” 853 F.3d at 499. Where
4 a plaintiff “was confused by the inclusion of [other language] with the disclosure,” such that he
5 was “not aware that he was signing a waiver authorizing the credit check when he signed it,” the
6 plaintiff has alleged a sufficiently concrete deprivation of the rights to information and privacy
7 protected by the statute. *Id.* at 499-500.

8 In his complaint, Olea alleges only that Teichert’s violation of the standalone disclosure
9 requirement caused him injury “included, but not limited to, having [his] privacy and statutory
10 rights invaded in violation of the FCRA.” ECF No. 1-2 at 20. But there is no evidence that Olea
11 suffered any concrete injury as a result of Teichert’s alleged violation of the standalone disclosure
12 requirement. Unlike the plaintiff in *Syed*, Olea was not deprived of his ability to meaningfully
13 authorize the credit check—he does not suggest that he was confused by the disclosure or unaware
14 that he was authorizing a credit check by signing it. Olea does not indicate that he was confused
15 by the documents he reviewed before signing the release:

16 Q: Was there anything on the request, authorization, consent and
17 release for background information form that was confusing to you?
A: I don’t recall.
Q: Was there anything under the summary of rights under the Fair
Credit Reporting Act that was confusing to you?
A: Not from what I remember.

18 ECF No. 48-3 at 37. Olea also understood that signing the release authorized Teichert to procure a
19 background report:

20 Q: That morning in the conference room, did you fill out the
21 background check forms?
A: Yes.
Q: So you understood at that time [on March 30, 2018] that Teichert
22 needed you to get a background check?
A: Yes.

Q: And you understood, when you signed this document, that
23 Teichert Pipelines would obtain a report to establish your eligibility
24 for employment?
A: Yes.

1 *Id.* at 35, 42. Olea has not suffered any other type of harm as a result of Teichert's alleged failure
2 to comply with the standalone disclosure requirement:

3 Q: And the background report didn't prevent you from getting work
4 at Teichert Pipelines; right?

5 A: That's correct.

6 Q: Is there some way that you can think of that the background
7 report harmed you?

8 A: Not that I could – no.

9 *Id.* at 50. Olea has not suffered any injury to the rights to privacy and information protected by
10 Section 1681b(b)(2)(A), nor has he suffered any other injury from Teichert's alleged violation of
11 the standalone disclosure requirement. Olea therefore fails to show he has suffered a concrete
12 injury-in-fact sufficient to confer standing at this stage of the litigation.

13 Because Olea does not have Article III standing to bring his FCRA claim, this Court lacks
14 subject matter jurisdiction over that claim. Thus, the Court cannot exercise supplemental
15 jurisdiction over Olea's state law claims under the CCRAA, ICRAA, and UCL. "A dismissal on
16 the merits is different from a dismissal on jurisdictional grounds." *Herman Fam. Revocable Tr. v.*
17 *Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001). "If the district court dismisses all federal claims
18 on the merits, it has discretion under § 1337(c) to adjudicate the remaining claims; if the court
19 dismisses for lack of subject matter jurisdiction, it has no discretion and must dismiss all claims."
20 *Id.*; see *Prather v. AT&T, Inc.*, 847 F.3d 1097, 1108 (9th Cir. 2017) ("Without subject matter
21 jurisdiction over [plaintiff's] federal claim, the district court properly concluded it had no
22 discretion to exercise supplemental jurisdiction over [plaintiff's] state law claims.").

23 **B. Remand**

24 "If at any time before final judgment it appears that the district court lacks subject matter
25 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). "Remand is the correct remedy
26 because a failure of federal subject-matter jurisdiction means only that the federal courts have no
27 power to adjudicate the matter. State courts are not bound by the constraints of Article III." *Polo*
28 *v. Innovations Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016). The only basis upon which the
Court could enter judgment in Teichert's favor on the remaining state law claims, rather than
remand, is if remand would be "futile." *Id.* at 1197. Because "[s]tate courts are not bound by the

1 constraints of Article III," Olea may be able to vindicate his claims in state court. *Id.* at 1996.

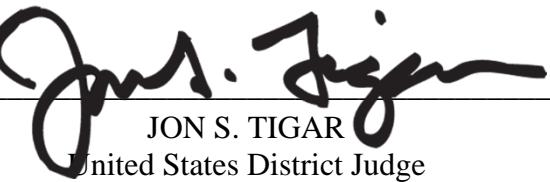
2 The Court will therefore remand this action to state court.

3 **CONCLUSION**

4 This action is hereby remanded to the Superior Court of Alameda County. The Court
5 denies the pending motions for summary judgment as moot. The Clerk shall close the file.

6 **IT IS SO ORDERED.**

7 Dated: September 25, 2023



8 JON S. TIGAR
9 United States District Judge